IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2006

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.402 of 2003
and
WPMP.No.12132 of 2003

M/s.Aurotrans Maritime Services (P) Ltd ... Petitioner

Vs.

1. The Chief Commissioner of Customs,
Custom House,
No.33, Rajaji Salai,
Chennai - 600 001.

2. The Commissioner of Customs,
Custom House,
No.33, Rajaji Salai,
Chennai - 600 001. .. Respondents

* * *

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari Mandamus as stated therein.

* * *

For petitioner : Mr.T.Ramesh

For respondents : Mr.S.Manikumar
SCGSC for R1 & R2

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O R D E R

This Writ Petition has been filed praying for the issuance of a Writ of Certiorari Mandamus, to call for the records on the file of the First Respondent relating to the impugned Order No.8/2001, dated 30.07.2001, passed by the First Respondent, and quash the same and consequently direct the second respondent to implement the Order No.53/99, dated 05.01.1999, passed by the Appellate Tribunal.

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2. Heard the learned counsel for the petitioner as well as for the respondents.

3. It is the case of the petitioner firm that it was granted with a temporary Custom House Agent Licence (in short, CHA), by the Commissioner of Customs, Bangalore, in the year 1988. Subsequently, the said licence was converted into a permanent licence bearing No.R-3/89, dated 31.05.1989, by the Commissioner of Customs, Bangalore, under Regulation 10, of the Customs House Agent Licensing Regulation, 1984. Since the petitioner firm's business in Chennai had improved, the petitioner firm was qualified, it had applied for Custom House Agent Licence under Regulation 10(2) of Custom House Agent Licensing Regulation, 1984. Based on the said application, the second respondent had issued the licence under Regulation 10(2) bearing licence No.R/282, dated 03.07.1989. As per the said licence, it was operating as Custom House Agent upto 16.01.1997. It was operating as an agent both in Bangalore as well as in Chennai. Since its business at Bangalore went down, its licence to operate at Bangalore had not been renewed and the petitioner firm had decided to pursue its business at Chennai only. Therefore, the petitioner firm had applied for renewal of the Custom House Agent Licence granted at Chennai, as per regulation 12 of Custom House Agent Licensing Act, 1984. The second respondent had passed an order, dated 28.04.1998, rejecting the petitioner firm's application for renewal, and thereby, cancelled the Custom House Agent Licence. Since the order was passed without following the principles of natural justice, the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) had remanded the matter back for de novo adjudication by its order No.796/98, dated 30.04.1998. In the de novo proceedings, conducted following the said order, a show cause notice was issued and after hearing the petitioner firm, the second respondent had passed an order on 28.07.1998, Order-in-original No.R.282-CHA. By the said order, the second respondent had disallowed the claim of the petitioner firm for renewal of the CHA licence on the ground that since the original licence granted at Bangalore had been cancelled due to non-renewal, the licence granted at Chennai, on the basis of the licence issued at Bangalore, cannot be renewed and therefore, it is liable to be cancelled. Accordingly, the second respondent had cancelled the licence issued at Chennai. Aggrieved against the said order, an appeal was filed by the petitioner firm before the Customs, Excise and Gold (Control) Appellate Tribunal. The Tribunal by its order No.53/99, dated 05.01.1999, had set aside the order of the second respondent, dated 28.07.1998, and directed the second respondent to renew the Custom House Agent Licence granted to the petitioner firm at Chennai. However, the second respondent had not implemented the direction of the Appellate Tribunal, Chennai, and therefore the petitioner firm had moved an application before the Appellate Authority seeking a direction to the second respondent to implement the order, dated 05.01.1999. The Appellate Tribunal by its order,

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dated 13.03.2000, made in Miscellaneous Order No.137/2000 had directed the second respondent to implement the order, dated 28.07.98, passed by the Appellate Tribunal . However, the second respondent had filed a writ petition before this Court in W.P.No.5678/2000 challenging the said order of the Appellate Tribunal. The writ petition was disposed of by this Court by an order, dated 23.11.2000.

4. During the course of the hearing in W.P.No.5678 of 2000, the learned counsel appearing for the petitioner firm sought for the permission of this Court to make an application before the second respondent for grant of temporary Custom House Agent Licence. Therefore, this Court, without going into the merits of the case, passed an order granting liberty to the petitioner firm to make an application before the second respondent for grant of temporary Custom House Agent Licence. The Court has also directed the second respondent to dispose of the application within two months. Following the said order, the petitioner firm had filed an application for grant of temporary Custom House Agent Licence on 10.01.2001. However, by order, dated 13.03.2001, the second respondent had rejected the application for grant of temporary Custom House Agent Licence. The petitioner firm preferred an appeal against the said order of rejection before the first respondent herein and by order, dated 30.07.2001, in order No. 8/2001 the first respondent dismissed that appeal.

5. It is the contention of the learned counsel for the petitioner firm that this Court had not decided the matter on merits while disposing of the writ petition No.5678 of 2000 filed by the second respondent and even though the writ petition was disposed of, the final order No.53 of 1999, dated 05.01.1999, passed by the Appellate Authority had not been set aside on merits and therefore the final order No.53/99,dated 05.01.1999, passed by the Appellate Authority still holds good and the second respondent ought to have implemented the same. Even though, several representations were made on behalf of the petitioner firm, the second respondent had not implemented the order passed by the Appellate Authority on 05.01.1999. Therefore, the present writ petition has been filed for the issuance of a Writ of Certiorarified Mandamus to quash the impugned order No.8/2001, dated 30.07.2001, passed by the first respondent and consequently to direct the second respondent to implement the order No. 53/99, dated 05.01.1999 passed by the Appellate Tribunal.

6. In the counter affidavit filed by the respondents it is stated that the petitioner firm, was issued with a regular CHA Licence at Chennai Customs House under the provisions of Regulation 10 (2) of the Custom House Agents Licensing Regulations, 1984, based on their regular CHA licence issued at Bangalore under Regulation 10

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(1). The licence issued at Chennai, had been periodically renewed from time to time. The last of such renewal was made upto 16.01.1997. On 27.12.1996, the petitioner firm had applied for renewal of their licence for a further permissible period from the date of its expiry. i.e.16.01.1997. Application for renewal of CHA licence had been scrutinised by the Custom House and it was found that they are eligible for further renewal under Regulation 12. In the meantime, a reference was sent to Bangalore Commissionerate to ascertain the details relating to the validity of the CHA Licence issued under Regulation 10. In this connection, it had been informed to the Custom House that the licence issued to the said firm had been cancelled at their end, as the petitioner firm had failed to renew the same. In view of the cancellation of the parent licence issued at Bangalore, the regular licence issued under Regulation 10(2) at this end had not been renewed from the date of its expiry by the Commissioner of Customs, by order, dated 20.02.1998. Against this order, the petitioner firm had filed an appeal before the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT), Chennai Bench. The CEGAT , by order No.796/98, dated 30.04.1998, remanded the case to the Commissioner for de novo consideration as the order, dated 20.02.1998, was issued in violation of the principles of natural justice. In the light of the CEGAT order, dated 30.04.1998, a Show Cause Notice, dated 11.06.1998, proposing cancellation of licence issued by the respondent, for the aforesaid reasons had been issued to the petitioner firm. In their reply , dated 26.06.1998, they had contended that they had complied with all the formalities and requirements for renewal of CHA licence and the licence issued at Chennai is an independent permit though it is based on the Bangalore licence. Accordingly, the Chennai licence is not a subsidiary to the parent licence, which stands on its own merits. A personal hearing was accorded to them on 17.07.1998. At the time of personal hearing, the petitioner firm had, inter alia, stated that the employment and livelihood of the party and its employees mainly depend on the Chennai licence. Finally, the Commissioner of Customs by an order, dated 28.07.1998, confirmed its ealirer stand and cancelled the CHA licence issued at Chennai. Against the above order, dated 28.07.1998, the petitioner firm had again approached the CEGAT. The CEGAT, by its order No.53/99, dated 05.01.1999, set aside the final order, dated 28.07.1998 of the Commissioner and directed the respondent to renew the CHA licence of the petitioner firm under Regulation 12 from the date of its expiry.

7. It is further submitted by the respondent that a reference application filed against the order No.53/99, dated 05.01.1999, passed by the CEGAT, Chennai, had been rejected as not maintainable by the CEGAT. In view of the rejection of the reference application by the CEGAT in the case of the petitioner firm, the original order, dated 05.01.1999 of the CEGAT directing this respondent to renew the CHA licence of the said company, ignoring the conditions of validity

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of parent licence under Regulation 10(1), had to be implemented immediately. Therefore, a writ petition was filed before the Hon'ble High Court in W.P.No.5678/2000 against the above said CEGAT order. The Hon'ble High Court in its interim order, dated 30.03.2000, in WMP No.8600/2000 in W.P.5678/2000 had ordered stay of the impugned order passed by the CEGAT , dated 05.01.1999.

In its final order , dated 23.11.2000, the Hon'ble High Court had ordered as follows :

> *"In view of the liberty sought by the learned counsel for the first respondent that the first respondent may be permitted to make an application before the petitioner for the grant of temporary CHA licence without going into the merits of the case, it is suffice to grant liberty to the first respondent to make an application before the Commissioner of Customs, ie.., the petitioner herein for the grant of temporary CHA licence so as to qualify himself to obtain the regular CHA licence at Chennai and Bangalore within a period of two weeks from the date of receipt of a copy of this order. As and when such application is made, the petitioner is directed to dispose of the same within a period of two months from the date of receipt of the application. With the above direction,s the writ petition is disposed of.*

It is submitted that as per the above order of the Hon'b;e High Court, petitioner firm submitted an application, dated 10.01.2001 for issue of temporary licence.

As per regulation 6 of CHALR 84, the condition to be fulfilled by the applicant , is that,

> (a) the applicant is a graduate from a recognised University and is an employee of a licensee and that he possesses a permanent pass in Form G prescribed under regulation 20 and has the experience of work relating to clearance of goods through the customs, for a period of; not less than three years in the capacity of such a pass holder: Provided that the Commissioner may relax the possession of permanent pass in Form G to one year for reasons to be recorded in writing.

9. It is submitted by the respondent that on a perusal of the documents furnished with the application under reference, it was seen that no individual indicated in the application fulfilled the conditions referred in Regulation 6 (a) of CHALR'84. Hence the

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application was rejected by the Commissioner of Customs vide O-in-O, dated 23.01.2000. The respondent further submits that the petitioner firm went in appeal against this O-In-O with the Chief Commissioner of Customs. The Chief Commissioner of Customs by order No.8/2001, dated 30.07.2001, had upheld the O-in-O, dated 23.01.2000, issued by the lower authority.

10. In so far as the affidavit filed in support of the Writ petition filed by the petitioner firm is concerned, the respondent submitted that this Court by its order, dated 23.11.2000, had directed the second respondent only to dispose of the application filed by the petitioner within a period of two months from the date of receipt of the same. Since a writ petition in W.P.No.5678 of 2000 had already been filed against the Tribunal's order,dated 05.01.1999 before this court, the question of renewing the old licence did not arise. Therefore, the order passed by the Chief Commissioner upholding the order of the Commissioner is sustainable and well within the law. The respondents further submitted that the petitioner firm's contention that the department had failed to implement the order of the Appellate Tribunal cannot be accepted on the ground that the department had only gone by the final order of this High Court in W.P.No.5678/2000 filed against the Tribunal's order. As the petitioner firm had not fulfilled the conditions stipulated under Regulation 6(1) of the CHALR 1984, the department had rejected their application for issuance of a temporary licence and therefore the petitioner firm's allegation is baseless.

11. On a perusal of the affidavit filed in support of the writ petition as well as the counter affidavit filed by the respondents , it is clearly seen that a writ petition had been filed on behalf of the respondents in WP.No.5678 of 2000, dated 23.11.2000, challenging the order passed by the Customs, Excise and Gold (Control), Appellate Tribunal, dated 05.01.1999, in which an interim order of stay was passed by order, dated 30.03.2000, in WMP.No.8600 of 2000. However, when the writ petition was taken up for final hearing the learned counsel appearing for the first respondent, namely, the petitioner firm herein, had stated that it may be permitted to make an application for grant of temporary Customs House Agent Licence and therefore this Court, without going into merits of the case, had granted liberty to make an application before the Commissioner of customs for the temporary Customs House Agent Licence so as to qualify himself to obtain a regular Customs House Agent Licence for Chennai and Banglaore. However, the application made by the petitioner firm, following the High Court order had been dismissed on merits. During the course of hearing of the writ petition the learned counsel for the petitioner firm had vehemently argued that since this court had not passed an order on merits in the writ petition No.5678 of 2000, the earlier order of the Customs and Gold Control Appellate Tribunal, dated 05.01.1999, would survive and would

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be operative and that he does not place much emphasis on the first part of his prayer challenging the order of the first respondent order No.8/01, dated 30.07.2001, rejecting his application for a temporary Customs House Agent Licence.

12. In such circumstances, in the view of this Court's earlier order, the order of the Customs Excise and Gold (Control) Appellate Tribunal , dated 05.01.1999 had merged with the order passed by this Court on 23.11.2000 in W.P.No.5678 of 2000 and therefore, it would not be open to the petitioner firm to pray for a direction to revive the order of the Customs Excise and Gold (Control) Appellate Tribunal , dated 05.01.1999.

Therefore, the writ petition is dismissed, consequently the connected WPMP is closed. No costs.

ssm

Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1. The Chief Commissioner of Customs,
   Custom House,
   No.33, Rajaji Salai,
   Chennai - 600 001.

2. The Commissioner of Customs,
   Custom House,
   No.33, Rajaji Salai,
   Chennai - 600 001.

1 cc to Mr.T.Ramesh, Advocate, SR.18864
1 cc to Mr.S.Manikumar, Advocate, SR.19148

pv (co)

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